Previous references.

Legn 53-11(1-3)B

1912.13

(Legn)

File No. 32-12

Serial Nos. 1-6

Later references.

Ct 240-14(1)E

Cto 177-16(1-3)

Legn 7-15(19,29,30)

P-24

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-6

Part B. for Sept 13

SUBJECT.

Amendment of para 4 of Rule 3 of Order XXXII of the Code of Civil Procedure 1911

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1 From the Regr Chf Ct 2945 of 1/3/13
stats that the 29/ Rule Committee agreed to amend the above Rule

2. To the Regr Chf Ct 2941 of 3/4/
Invites attention to sec 122 of the C.P.C. 1911.
Enquires if the draft amendment has been previously published

3 From the Regr Chf Ct 319/13 of 15/7/13.
states that the draft amendment was duly published in the Mysore Gazette,

G. R. S. 58

J
12/10

4. From The J A. Report 2360 of 19.7.14.
Forwards for information the proposal to amend Rule 3 of order XXXII of the C.P.C, 1911

5. From The Regr Chf Ct The D.C. Mysore & Shimoga for communication to the R. A. Members & the DCs of other Dists
J 1123-31 of 29/9/13.
Sanctions the amendment

1. From The J A Report 5923 of 26/9/13.
Informs that the Resident sees no prima facie objection to the proposed amendment.

G.R.S. 11] 1912-13

GENERAL AND REVENUE SECRETARIAT.

(Legs)

NOTES

File No. 32-12

FILE HEADING.

Amendment of para 4 of Rule 3 of order XXXII of the Code of Civil Procedure, 1911.

From

The Registrar, chief Court of Mysore

No. 2945/207 Dated 1/3/13 Received 2/3/13

Diary No. 2920 | Enclos. 1 Spare Copies. — | Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that the matter was referred to the Rule committee and that all agreed that the Rule should be amended by inserting the word "(to be served with either upon the minor personally or in such other manner as the court in each instance may direct)" after the words "upon notice to the minor in order 32 Rule 3(4).

NOTES AND ORDERS.

Submitted with a copy of the Code of Civil Procedure and the previous file on the subject. Under sec 122 of the C.P.C., 1911 the chief court has power to annul, alter or add to all or any of the Rules in the first schedule after

NOTES—First Sheet.

GPB—30,000—12-8-11

G. R. S. 12]

General and Revenue Secretariat. | Legis File No. 32 of 1912-13

Serial No.

previous publication. Perhaps this requires that the draft amendments should be first published and public opinion invited. The letter from the Registrar Chief Court does not state if the draft was previously published. May the Chief Court be asked to publish the draft amendment in the Gazette and to forward to this office any objections or suggestions received from the public

(58) SN 8/3/13 8/3/13

2. Under Section 23 of the General Clauses Regulation the Expression 'previous publication' involves that the authority having power to make rule should publish a draft for information take into consideration any suggestions ~~[illegible]~~ received this procedure does not seem to have been adopted the Chief Court may now be requested to do so

Dy Sec'y) SPA 21/3

3. A draft on these lines may be put up.

Dues 22/3

SPA 24/3

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

R. S. 12]

General and Revenue Secretariat.

Legis' File No. 32 of 1912-13

Serial No.	
4	Submitted with a draft letter to the Registrar Chief Court (58) SW 24/3/13 (D & Secy) 5. Please put up duly draft as revised SW 6. 27/3 Resubmitted with a fair draft (58) 27/3/13 (D & Secy) 7. 1st Councillor 8. Draft appd. by 1st Councillor 29.3.13. DNS 4/4/13
2	No J294 dated 3/4/13 To the Registrar Chief Court, Mysore Invite attention to sec 122 of the C.P.C., 1911 and enquires if the draft amendments has been previously published and if not to have the same published and ~~then the amendments~~ forwarded to this office with the objections &c. if any received

SPL 26/3
Secy 27/3
SPL 27/3

Remarks & Notes written on back of page

SPL 28/3
Secy 28/3
12

WS 31/3 Secy 31/3

9. Issue
SPL 31/3

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

SUBJECT No. 14.

Amendment of Rule 3, Schedule (1), Order XXXII, of the Civil Procedure Code.

Mr. S. Seetharamiah, Shimoga taluk.

Summary of discussion.—This Rule makes it obligatory that a notice should be served on the minor defendant before an order is passed for the appointment of a guardian. As this procedure is opposed to judicial principles, the Rule may be amended.

This was considered along with subject No. 15.

SUBJECT No. 15.

Amendment of the Civil Procedure Code *re* issue of notices to minors.

Mr. Guru Rao, Mysore District Board.

Summary of discussion.—The Civil Procedure Code requires the issue of notice to minors when they are parties in a suit. This being of no use, it is prayed that this rule may either be amended or so modified as to bring minors of above ten years within its operation.

Reply of Government.—The question has been referred to the Rules Committee. Let us await the receipt of the recommendation of that body.

10. Submitted

The draft amendment was sent by the chief court. But as previous publication was is required under sec. 122 C.P.C. it was returned to the chief court for publishing the draft in the Mysore Gazette and to retransmit the same to this office with any suggestions or objections that may be received ~~together with~~ and the opinion of the chief court thereon (Please see linked file Legis 32-12 serial 2) ~~Flag~~. May this be placed in that file and the receipt of the draft amendment from the chief court awaited

Flag T

(SS) SW 9/6/13 10/6

11 Yes SW 10/6

Yes

J. 59

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 32 of 1912-13

Serial No.

16. Please put up draft order

SDL 1/9

17. Submitted with a draft order
Orders are required as to whether the
draft to the Residency approved by
the 1st Councillor and the Secretary
may issue.

18. Issue & submit file

SDL 16/9

(48) 16/9/13

4 Pol. No 236 dated 19th Sept: 1913
to the F. A. Resident
Forwards for information the proposal
to amend rule 3 of order XXXII of
the C.P.C., 1911

19. Submitted again as ordered above.

(48) 24/9/13 KRL

25 The draft order may not
be issued if approved

Dy Secy)
1st Councilor)

SDL 28/9
Dy Secy

Draft appd: by 1st Councilor 28/9 MK
26.9.13
MSJ

27/9 27/9

Issue

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

7

General and Revenue Secretariat. | Legis File No. 32 of 1912-13

Serial No.	
	Reg the Rule J 1123-31/Legis 32-12-S d 29 Sep 1913 to be inserted?
	No
	30/9/13
	30/9
5	No J 1123-31 d 29/9/13 to the Regr Chief Court. The D. C.'s of Mysore and Shimoga for communication to the R.A. members and the D. C.'s of Other Dts. Sanctions the amendment to the Rule as proposed by the Chief Court (vide pl 1)
6	No 5923 dated 26/9/13 from the F. A. Resident Informs that the Resident sees no prima facie objection to the proposed amendment

B
1/12/13

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Narasinga Rao and Doraswamy Iyer were for dispensing with service on the minor personally in all cases, at the same time giving a discretion to the court to direct otherwise and to order in any case that service made on the minor be deemed good service.

Though at one time the Chief Court considered that notice to the minor was unnecessary and not productive of real good the Judges now incline to the view that such notice is necessary. It is one of the elementary rules of pleading that no order finally deciding ~~the~~ a question between the parties should be made absolute, ex-parte, without previous notice to the party affected by it. A final order that the defendant or one of the defendants to a suit is a minor and that a certain person is a fit and proper person to act as his guardian for the purpose of defending the suit on his behalf, should not therefore be passed without notice to such defendant. Under the old code, orders used to be passed without such notices being issued and merely upon the affidavits of the plaintiffs, and it was held by the High Courts and by the Privy Council that the omission to issue such notices was a mere irregularity covered by Section 578 of the Code (14 Cal. 204 and 30 Cal. 1021). But it was often found that very serious consequences resulted to the minors by notices not being issued to them, for it was not difficult for unscrupulous plaintiffs to make out plausible cases on affidavits and the co[illegible]

had nothing but the affidavits themselves to look to. It also not unfrequently happened that the guardians proposed by the plaintiffs, being influenced by the latter, did not protect the interests of the minors in the way they ought to have done. It was ~~also~~ apparently with a view to remedy this state of things that the framers of the new Code enacted the sub rule in question the object of course being to give an opportunity ~~of~~ to the minors and to those interested in them either to show that the alleged minors were not minors or that the persons proposed as their guardians were not fit and proper persons to act as such.

It may be that in most cases notices to persons interested such as the guardian appointed by ~~the~~ court, or the father or other natural guardian of the minor, or where there is no father or other natural guardian the person in whose care the minor is, will enable the court to decide the question of the minority of the defendant and the fitness of the person proposed as his guardian in as effectual a manner as if the notice had issued to and been served on the minor himself; but there may also be cases in which the minor having arrived at an age at which he would be able to ~~xxx~~ protect his own interests would be in a position to appear before the court and show to the satisfaction of the court that the application of the plaintiff ought not to be

5

I am to suggest that, for the reasons stated above; the rule be ~~xxxx~~ amended by inserting the words "(to be served either upon the minor personally or in such other manner as the court in each instance may direct)", after the words "upon notice to the ~~x~~ minor"in Order 32, Rule 3 (4).

I have the honour to be,

Sir,

Your most obedient servant,

Registrar.

2

ab
Fair draft 1/4/13

Ligs

6

G.R.S. 26]

File No. 32-12

Serial No. 2

Diary No. of letter replied to J 2420

No. J 2941

General and Revenue Secretariat

( )

, the *19*

To

The Registrar, Chief Court of Mysore

Date of issue 3-4-1913

Signed by Mr S. Rajagopalachar

Sir

With reference to your letter No 2945/207 dated 28th February 1913 forwarding a proposal to amend para 4 of Rule 3 of Order XXXII of the code of Civil Procedure, 1911, regarding the manner of service of notice on a minor defendant for

over.

SUBJECT.

7

appointing a guardian for the suit, I am to invite your attention to section 122 of the civil Procedure code which requires the previous publication of the draft rules, and to enquire whether this has been done in this case. If not, I am to request you to be so good as to have the draft amendment duly published in the Gazette and any suggestions or objections that may be received touching the amendment, duly forwarded to Govt together with the opinion of the chief Court thereon

I have &c

for Secretary to Govt

29/3/13

List of enclosures,

Copied by B.S. 1/4.

Examined by

GPE—10,000—28-2-11.

8

No 319/13

CHIEF COURT OF MYSORE,

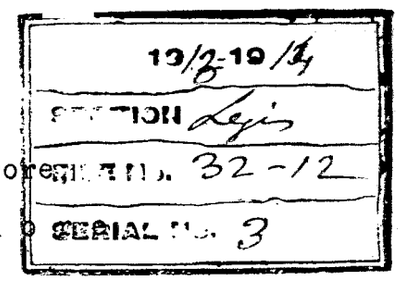
Bangalore, dated 15th July 1913

15th

DIARY No. J.209

From,

The REGISTRAR of the
Chief Court of Mysore,
Bangalore



To,

The SECRETARY to the Govt: of Mysore,
General and Revenue Departments.

S i r,

Adverting to your letter No. J. 2941/Legis.32-12-2 dated the 3rd April 1913, in re the proposal to amend para 4 of Rule 3 of Order XXXII of the Code of Civil Procedure, 1911, I am directed to state that the draft amendment was duly published in the Mysore Gazette on the 17th and 24th April and 1st May 1913, and that no objections or suggestions have been received.

I have the honour to be,
Sir,
Your most obedient servant,

REGISTRAR.

N.G.

9

G. R. S. 26] 1719

209

Diary No. of letter replied to

General and Revenue Secretariat

( )

the *191*

Date of issue 19-9-1913.

Signed by Mr K.R. Srinivasaraghavan

Legn. File No. 32

Serial No. 4-12

To the Residency Agency of the

Forwarding a draft amendment of

Rule 3 of order XXXII of C.P.C., 1911

Fol No. 23 pages

To The F.A. Resident

in Mysore, Bangalore

Sir

I am directed to forward herewith for your information a copy of the draft amendment of rule 3 of order XXXII of the civil Procedure code, 1911. The rule as it now stands requires notice to be given to the minor defendant concerned before

over.

SUBJECT.

Reg 14

Copy 8/8/19

10

the court can make an order for the appointment of a guardian for the suit. The rule does not specify the mode of service of such notice and in the absence of any discretionary power given to the court in the matter, ~~the~~ the rule itself ~~it~~ is ~~to be personal~~ understood to mean personal service on the minor. ~~in person~~ ~~to be made~~

As such personal service cannot be made when the minor is very young it is deemed desirable to leave it to the discretion of the court to ~~choose~~ prescribe ~~the~~ mode of service The accompanying draft has accordingly been

List of enclosures,

Copied by

Examined by JU

GPB- 25,000 8-8-11.

11

proposed by the chief comm~~d~~ ~~Lands~~

I have &c.

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

Secretary to Govt

(*Continuation Sheet draft form.*)

31/7/13

Draft

24/5/13

11 Copies

Ordering that the suggestion of the Rule committee to amend Rule 3 of order XXXII of the C.P.C 1911, be approved.

G.R.S. 28]

18/9 2/10

Legis File No. 32-12

Serial No. 5

Diary No. of letter replied to J209

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.

( )

the 191

READ— Subjects Nos. 14 and 15 of the Proceedings of the Representative Assembly, 1912, regarding the amendment of Rule 3 of order XXXII of the Civil Pro. code, 1911.

Date of issue 29.9.13

Signed by M.S.P. Naga Mahale
Chen

ORDER THEREON. ~~No.~~

~~Letter No. correspondence~~

~~ending with~~ Letter No. 2945 dated 1st March 1913 207 ~~15th July 1913 forwarding~~

over.

SUBJECT.

13

from the Registrar, Chief Court of Mysore, forwarding the proposal of the Chief Court to amend Rule 3(4) of Order XXXII by the insertion of the words "to be served either upon the minor personally or in such other manner as the Court in each instance may direct" after the words "upon notice to the minor" therein.

Order thereon

The amendment proposed by the Chief Court is sanctioned. Rule 3(4) of order XXXII as now amended reads as follows:-

"3(4). No order shall be made on any application under this rule except upon notice to the minor to be served either personally or in such other manner

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

as the court in each instance may direct, and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule."

The chief Court will publish the necessary notification as required by sec 127 of the code of civil Procedure, 1911

For Secretary to Govt

26/9/13

To ~~The Chief Court~~ Flag O
The Registrar, chief court of Mysore
The D.C.'s of Mysore and Shimoga Dts
for communication to the members
who master the subject
The D.C.'s of other Districts

Copy to the Dasara Secretary

GPB—10,000—22-2-11

Dasara 25/9

Copy 24/9

Pol 2.526 of 26-9-13

DIARY No. 1080

1913-19 14
SECTION Legis
FILE No. 32-12
SERIAL No. 6

No. 592

FROM

P. B. WARBURTON, Esq., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 26th September 1913.

SIR,

I am directed to acknowledge the receipt of Mr. -- Srinivasa Iyengar's letter No. 236 Pol., dated the 19th September 1913, forwarding the draft of an amendment to rule 3 of order XXXII of the Civil Procedure Code, 1911, and to state, in reply, that the Resident sees no objection to the proposed amendment.

I have the honour to be,

Sir,

Your most obedient servant,

First Assistant Resident.

R. O. 2.—R. P. B.—8-1913.—1,000.